

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO.819 OF 2016

1. Sau. Geetabai Shivraj Kantode,
Age about 62 years,
R/o. Surbhi Nagar, Yavatmal,
Tq. & Distt. Yavatmal.
2. Bhushan Shivraj Kantode,
Age about 32 years,
R/o. Flat No.201, Block No.9,
VBHC Apartments, Byagadaenahalli,
Chandapura, Anekal Taluka,
Bengluru – 562106.

....APPLICANTS

// VERSUS //

1. State of Maharashtra,
Through Station Officer,
City Police Station, Yavatmal,
Distt. Yavatmal.
2. Narendra Rambhau Mehture,
Age 34 years,
R/o. Pahur (Dabha), Tq. Babhulgaon,
Dist. Yavatmal.

.... NON-APPLICANTS

Shri M. A. Vaishnav, Advocate for the applicants.

Ms. Mayuri Deshmukh, A.P.P for the non-applicant No.1/State.

Ms. S. B. Khobragade, Advocate (Appointed) for the non-applicant No.2.

**CORAM : Z. A. HAQ AND
AMIT B. BORKAR, JJ.**

DATE : 16.02.2021.

CRIMINAL APPLICATION (APPP) NO.2135/2017

For the reasons stated in the application, the application to incorporate challenge to the charge-sheet is allowed.

The amendment be carried out forthwith.

ORAL JUDGMENT : [PER: AMIT B. BORKAR, J.]

1. Heard.

2. By this application under Section 482 of the Code of Criminal Procedure, the applicants have challenged registration of the First Information Report bearing No.421/2016 dated 07.07.2016 registered with the non-applicant No.1–Police Station and consequent charge-sheet No.346/2016 filed with the Chief Judicial Magistrate, Yavatmal.

3. The First Information Report came to be registered against the applicants and others with the accusations that due to harassment caused by the applicants and the husband of the victim, the victim committed suicide on 07.07.2016. After the registration of the First Information Report, the mother-in-law who is applicant No.1 and the brother-in-law who is applicant No.2 have challenged registration of the First Information Report by way of filing the present application.

4. This Court on 18.12.2017 admitted the present application and granted interim relief, thereby directed non-applicant No.1 not to proceed with the investigation.

5. The non-applicant No.1 has filed reply and it is stated that the marriage between the victim and her husband was solemnized on 24.05.2006. It is further stated that thereafter, there was demand of dowry from the husband of the victim and other accused. It is further stated that the statement of son of the victim was recorded by the Child Welfare Committee. It is stated that considering the statements of complainant and other witnesses, there is sufficient material against the applicants.

6. During pendency of the present application, charge-sheet No.346/2016 came to be filed against the applicants and others. The applicants have challenged filing of the charge-sheet against the applicants in the present application.

7. The non-applicant No.2 has not filed reply. The learned Advocate appearing for the non-applicant No.2, who is appointed through High Court Legal Services Authority stated that the non-applicant No.2 has not given instructions to her and therefore, she is unable to assist the Court.

8. With the assistance of the learned Advocate for the applicants and the learned A.P.P, we have scrutinized the First Information Report and material in the charge-sheet. The applicant

No.1 is mother-in-law of the victim and the applicant No.2 is the brother-in-law, who at the relevant time was residing at Hyderabad.

9. Before holding an accused guilty under Section 306 of the Indian Penal Code, Court is required to scrutinize following factors:-

(i) Whether the person has abetted the commission of suicide of another or not is to be gathered from facts and circumstances of each case and to be found out by continuous conduct of the accused, involving his mental element.

(ii) Direct involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence under Section 306 I.P.C.

(iii) In order to prove abetment, it must be shown that the accused kept on urging or annoying the deceased by words, taunts until the deceased reacted. A casual remark or something said in routine or usual conversation should not be construed or misunderstood as "abetment".

(iv) More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 I.P.C.

(v) It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 I.P.C. is not sustainable.

(vi) Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an "instigation" may have to be inferred.

(vii) Undoubtedly, presence of mens rea is the necessary concomitant of instigation. (See - Pawan Kumar Vs. State of Himachal Pradesh reported in (2017) 7 SCC 780, Paras 34 to 42)

10. In the context of ingredient of the offence under Section 306 of the Indian Penal Code, we have scrutinized the material. On perusal of the material on record, we find that there is no material against the applicants to fulfill the ingredients of the offence under Section 306 of the Indian Penal Code. There is no specific role attributed to the applicants in the statement of witnesses. The allegations against the applicants are vague in nature. There is no material on record that the Applicants, by their acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide. In the facts of present case, merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, the applicants who are in-laws cannot be prosecuted.

11. The prosecution has relied on the statement of child of the victim, who at the relevant time was 10 years old. We have

carefully considered the statement of the child recorded by the Child Welfare Committee. In the said statement, the child has not stated anything adverse against the present applicants so as to implicate the applicants in the offences alleged against them.

12. Insofar as offence under Section 498-A of the Indian Penal Code is concerned, the allegations in the First Information Report are vague. The non-applicant No.2-Informant had not stated in which month or year, the alleged mental and physical harassment was caused to the victim. In absence of specific role assigned to the applicants, in the facts of the present case, we are of the opinion that the ingredients of the offence punishable under Section 498-A of the Indian Penal Code are not fulfilled.

13. On overall consideration of the allegations in the First Information Report, the material in the charge-sheet and the applicants at the relevant time had been residing at Hyderabad, we are satisfied that the continuance of proceedings against the applicants would amount to abuse of process of Court.

14. We therefore, pass the following order :

The First Information Report bearing No.421/2016 registered with the non-applicant No.1-Police Station for the

offences punishable under Sections 306, 498-A read with Section 34 of the Indian Penal Code and consequent charge-sheet No.346/2016 filed with the Chief Judicial Magistrate, Yavatmal are quashed and set aside to the extent of the present applicants.

Rule is made absolute in the above terms.

JUDGE

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